FILED
OCT 10 1956
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

October Term, 1956

No. 499

ROBERT L. HOLCOMB, *Petitioner*

v.

THE UNITED STATES, *Respondent*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

CARL L. SHIPLEY,
982 National Press Building,
Washington 4, D. C.

SAMUEL RESNICOFF,
280 Broadway,
New York, N. Y.
*Attorneys for Petitioner.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

## INDEX


| | Page |
|---|---|
| Opinion Below | 1 |
| Jurisdiction | 1 |
| Questions Presented | 2 |
| Statute Involved | 2 |
| Statement of Case and Argument | 2 |
| Conclusion | 6 |


## TABLE OF CASES


| | |
|---|---|
| *Boone* v. *Lightner*, 319 U.S. 516 | 5 |
| *Elder* v. *Brannon*, 341 U.S. 277 | 5 |
| *Fishgold* v. *Sullivan Drydock and Repair Corp.*, 328 U.S. 275 | 5 |
| *Stringer* v. *U. S.*, 90 F. Supp. 375 | 4 |


## STATUTES AND OTHER CITATIONS


| | |
|---|---|
| 5 U.S.C. 861 | 2 |
| 28 U.S.C. 1255 | 1 |
| 63 Stat. 377, 381 | 3 |
| 90 Cong. Record 3503: | |
| Sen. Report 907, 78th Cong., 2d Sess. | 5 |
| H. Report 1289, 78th Cong., 2d Sess. | 5 |

IN THE

# Supreme Court of the United States

October Term, 1956

---

No.

---

ROBERT L. HOLCOMB, *Petitioner*

v.

THE UNITED STATES, *Respondent*

---

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

---

Carl L. Shipley and Samuel Resnicoff on behalf of Robert L. Holcomb pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above captioned case on July 12, 1956, dismissing plaintiff's petition.

### OPINION BELOW

The opinion of the court below is reported at page 1a of the Appendix hereto.

### JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. 1255.

## QUESTIONS PRESENTED

1. Whether the United States Court of Claims erred in holding that a civil service employee of the Federal Government on annual leave is not an employee within the meaning of the transfer of agency provisions of Section 12 of the Veterans' Preference Act?

## STATUTE INVOLVED

Section 12 of the Veterans' Preference Act provides (5 U.S.C. 861):

> "* * * when any or all of the functions of any agency are transferred to, * * * some other agency * * * all preference employees in the function or functions transferred * * * shall be first transferred to the replacing agency, * * * for employment in positions for which they are qualified before such agency * * * shall appoint additional employees from any source for such positions."

## STATEMENT OF CASE AND ARGUMENT

Petitioner is a veterans preference eligible with civil service status, who brought suit in the court below to recover back pay from March 31, 1949, to February 5, 1951, on the basis of an alleged wrongful separation from the War Assets Administration, and an alleged unlawful denial of transfer of position rights in the General Services Administration, in violation of Section 12 of the Veterans' Preference Act.

On March 15, 1949, the War Assets Administration notified petitioner that by reason of a reduction in force his last day of active duty would be March 31, 1949, and that after that day he would be carried in an annual leave status to December 23, 1949, and after that in furlough status through March 14, 1950.

On June 30, 1949, the War Assets Administration was transferred to the General Services Administration pursuant to the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 381, which provides as follows:

> "TRANSFER FOR LIQUIDATION OF THE AFFAIRS OF WAR ASSETS ADMINISTRATION
>
> "SEC. 105. The functions, records, property, personnel, obligations, and commitments of the War Assets Administration are hereby transferred to the General Services Administration. The functions of the War Assets Adminstrator are hereby transferred to the Administrator of General Services. The War Assets Administration, the office of the War Assets Administrator and the office of Associate War Assets Administrator are hereby abolished." (Emphasis supplied)

On June 30, 1949, when the above transfer of functions took place, petitioner was an employee of the War Assets Administration in annual leave status as set forth hereinabove. At the time petitioner was placed on annual leave he held the position of Surplus Property Disposal Specialist, CAF-9, $5,106.60 per annum. He had held various positions in the Federal civil service for over fourteen years.

Under the provisions of Section 12 of the Veterans' Preference Act, petitioner had a legal right to be transferred to the General Services Administration for employment in any position for which he was qualified "before such agency * * * shall appoint additional employees from any other source." As set forth in petitioner's petition in the Court of Claims, the General Services Administration appointed new employees, without complying with Section 12 and restoring peti-

tioner to active duty. The defendant did not controvert petitioner's allegations, but simply took the position that petitioner, since he was on annual leave, was not an employee entitled to the benefits of Section 12 at the time War Assets Administration was transferred to and replaced by the General Services Administration. The court below held that petitioner was not an employee within the meaning of Section 12 by reason of his annual leave status on June 30, 1949. Judge Madden in his dissent to the decision of the Court of Claims put his finger on the error in the decision when he said "an employee on annual leave, even if he has received a notice that his employment and pay will be terminated at the expiration of his leave, is still a government employee, and is being paid only because he is a government employee. A normal reading of Section 12 would give him the rights created by that Section." At another point in his dissent, Judge Madden says "the Civil Service Commission held that because the plaintiff was not at work on June 30, 1949, the language of Section 12 gave him no rights. I see no reason for such construction of Section 12. It is not, after all, an interference with the freedom of management of administrators to say to them that if functions are transferred to their administration, those who have been performing those functions should get the jobs of performing them in the new agency."

It is obvious that the Court of Claims judgment places a narrow and restrictive construction on Section 12 of the Veterans' Preference Act. This construction will have far-reaching consequences on similarly situated veterans in the years to come. As stated in *Stringer* v. *U. S.*, 90 F. Supp. 375, "there is noth-

ing ambiguous about the Veterans' Preference Act. Rightly or wrongly, it was enacted by Congress in recognition of the great sacrifice of those who had an active part in our national defense at times when everything we cherished was at stake". Moreover, the narrow construction adopted by the Court of Claims is in direct contravention of the legislative purpose underlying Section 12 as disclosed in the proceedings in Congress. See *90 Congressional Record* 3503, Sen. Rept. No. 907, 78th Cong. 2d Sess., H. Rpt. No. 1289, 78th Cong. 2d Sess.; see also *Elder* v. *Brannon,* 341 U.S. 277. And apart from this, the Supreme Court of the United States has stated and restated the rule that veterans' legislation must be construed liberally. For example, in *Fishgold* v. *Sullivan Drydock and Repair Corporation,* 328 U.S. 275, it was held that veterans' legislation is "to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." The same rule of liberal construction of laws conferring benefits on those who have performed military service is stated in *Boone* v. *Lightner,* 319 U.S. 516. The decision of the Court of Claims in the case at bar does not meet the rule established by the Supreme Court. Contrarily, by a narrow construction of Section 12, the Court of Claims has effectively nullified a large portion of the benefits conferred on veterans by Section 12 of the Veterans' Preference Act. The consequences of its action will be far reaching, and this Court should review the decision below to insure that the mandate of Congress is carried out.

## CONCLUSION

WHEREFORE, the premises considered, petitioner prays that his petition for a writ of certiorari be granted.

CARL L. SHIPLEY,
982 National Press Building,
Washington 4, D. C.

SAMUEL RESNICOFF,
280 Broadway,
New York, N. Y.
*Attorneys for Petitioner.*

# APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 97-55

(Decided July 12, 1956)

ROBERT L. HOLCOMB v. THE UNITED STATES

*Mr. Carl L. Shipley* for the plaintiff.

*Miss Kathryn H. Baldwin*, with whom was *Mr. Geo. S. Leonard, Acting Assistant Attorney General* for the defendant.

ON DEFENDANT'S AND PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT

LITTLETON, *Judge*, delivered the opinion of the court:

Plaintiff, a veteran preference eligible with civil service status, has brought this suit to recover back pay from March 31, 1949 to February 5, 1951,[1] on the basis of an alleged wrongful separation from the War Assets Administration, and an alleged unlawful denial of a right to reemployment in the General Services Administration. The case is before the court on motions by both parties for summary judgment together with supporting affidavits and exhibits.

On March 15, 1949, the War Assets Administration pursuant to a reduction-in-force action notified plaintiff that his last day of active duty would be March 31, 1949, and that after that day he would be carried on an annual leave status to December 23, 1949, and after that on furlough status through March 14, 1950. On appeal the Civil Service Commission upheld plaintiff's separation.

[1] On this date plaintiff secured employment with the Department of the Army.

Plaintiff's separation as well as the dismissal of thousands of employees in the War Assets Administration resulted when Congress on June 30, 1948, 62 Stat. 1202, provided for the abolition of that agency by February 28, 1949. This date was later extended to June 30, 1949, 63 Stat. 6. The agency requested and was granted authority by the Civil Service Commission to apply the special provisions of 5 CFR (1949 Ed.) § 20.12, 12 F. R. 3649, in reducing its staff. This regulation headed "Special regulations on liquidations" reads in part as follows:

> Whenever it has been determined that all functions and all positions in an entire department, an entire governmental entity, or an entire competitive area are to be abolished within a specified time period, actions may be taken in regard to individual employees at different dates at administrative discretion: *Provided, however,* That no employee with veteran preference shall be relieved from active duty before any competing employee in a lower retention subgroup is relieved from active duty, where their positions are immediately interchangeable: * * *.

Reductions under this regulation required only that the agency observe subgroup standings within *competitive levels.* So-called "bumping rights" or reassignment rights to other competitive levels which would be present if a continuing agency were involved were not granted by the Commission. See 5 CFR (1949 Ed.) § 20.9.

With the demise of the War Assets Administration on June 30, 1949, its remaining functions and personnel which had not been dismissed were transferred to the General Services Administration, 63 Stat. 377, 379, for the purpose of further liquidation. It was necessary for the W. A. A. to keep some personnel for liquidation purposes.

Although the plaintiff in opposition to defendant's motion for summary judgment has filed a cross-motion to the same effect, his initial position is that summary judgment does not lie because of the presence of questions of mate-

rial fact which require a trial. These questions, plaintiff urges are: (1) Whether in the light of the fact that functions of the War Assets Administration were transferred to the General Services Administration the former was not liquidated but was in fact a continuing agency, and (2) whether an employee with less retention credits than plaintiff was retained in a job which was interchangeable with plaintiffs within the meaning of 5 CFR 20.12, *supra*.

That the War Assets Administration ceased to be an agency on June 30, 1949 is quite apparent. The act of June 30, 1948, *supra*, stated "Effective February 28, 1949, [later extended to June 30, 1949] the Office of the War Assets Administrator is abolished and the War Assets Administration shall cease to exist as an agency of the Government * * *." The Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 381, which created the General Services Administration provided with respect to the War Assets Administration as follows:

> TRANSFER FOR LIQUIDATION OF THE AFFAIRS OF WAR ASSETS ADMINISTRATION
>
> SEC. 105. The functions, records, property, personnel, obligations, and commitments of the War Assets Administration are hereby transferred to the General Services Administration. The functions of the War Assets Administrator are hereby transferred to the Administrator of General Services. The War Assets Administration, the office of the War Assets Administrator and the office of Associate War Assets Administrator are hereby abolished.

While certain of the remaining functions of the War Assets Administration were transferred to the General Services Administration, they were transferred for the purposes of liquidation. Plaintiff points to no evidence other than the fact that the same individual who was War Assets Administrator became General Services Administrator, nor to the source of any evidence which would, despite the language of these statutes, establish the fact that the War Assets Administration was in fact a continuing agency.

With respect to the second question, defendant, in its answer to the petition, alleges that at the time of plaintiff's separation all other employees in the same competitive level had been separated from active duty, and that no employee with a lower retention status was retained in plaintiff's competitive level.

This allegation being contra to the allegations contained in plaintiff's petition certainly raises a question as to a material fact. However, it is to resolve such questions and permit the disposition of cases on motion for summary judgment that the filing of affidavits and exhibits is permitted. It is the filing of these supporting papers which distinguish the summary judgment procedure from that of a motion to dismiss or motion for judgment on the pleadings. Therefore, to resolve this issue and support its allegation the defendant accompanies its motion with an affidavit by one Edward V. Kline, an official of the War Assets Administration office in New York where plaintiff was employed, which affidavit reads in pertinent part as follows:

> 2. On March 15, 1949, I was Chief of the Employee Developing Branch in the Office of Personnel, and operating Assistant Personnel Officer for War Assets Administration, Region II, of New York; and my official duties in such capacities included responsibility for the conduct of reductons in force in said agency.
>
> 9. When Robert L. Holcomb received his notice of separation on March 15, 1949, he was the only employee remaining on his retention register. Every other employee in this competitive level had received notice of separation prior thereto.

Plaintiff has filed no counter-affidavits nor has he indicated a possible source of evidence which was not available to him at the time he filed his reply or at the time of the submission of this case. In the absence of such a showing the above affidavit must be accepted as resolving the question. *Lindsey* v. *Leary*, 149 F. 2d 899, CCA 9; *DeLuca*

v. *Atlantic Refining Co.*, 176 F. 2d 421, 423, CCA 2; *Orvis* v. *Brickman*, 196 F. 2d 762, 765, CCA, DC; and *Leishman* v. *Radio Condenser Co.*, 167 F. 2d 890, CCA 9. Compare *Albert Dickinson Co.* v. *Mellose Peanut Co.*, 179 F. 2d 265, 268, CCA 7.

Since the War Assets Administration was at the time of plaintiff's separation in a stage of liquidation pursuant to Congressional mandate, that agency was entitled to utilize the procedure provided by 5 CFR 20.12, *supra*, in reducing its staff. Under this regulation plaintiff, as a veteran, could not be removed from active duty "before any competing employee in a lower retention subgroup is relieved from active duty, where their positions are immediately interchangeable." At the time of plaintiff's separation he was the only employee remaining on his retention register. Every other employee at his competitive level had received notice prior to him. In short, plaintiff was the only employee at his competitive level, thus subject to be removed "at administrative discretion."

Nor does section 12 of the Veterans' Preference Act, 58 Stat. 390; 5 U. S. C. (1952 Ed.) § 861, which governs reduction in force procedures, grant plaintiff any further preference. That statute like the above regulation speaks of "competing employees" which of course would be employees at the same competitive level and on the same retention register.

The fact that plaintiff at the time of the receipt of his notice of separation was the sole remaining employee at his competitive level makes immaterial the question as to whether his retention credits had been properly computed by the War Assets Administration.[2]

---

[2] Although plaintiff contends that the War Assets Administration failed to credit him with time spent in the military service as required, a computation by the Civil Service Commission of plaintiff's length of service, including that spent in the military, shows that he was actually credited with more service than he actually had.

If plaintiff was effectively separated from the War Assets Administration prior to June 30, 1949, it follows that he had no reassignment rights in the newly created General Services Administration under either the Veterans' Preference Act, *supra*, or the regulations of the Civil Service Commission. The act provides that when "any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions." The regulations, 5 CFR (1949 Ed.) § 20.6 (a), provides that upon the transfer of one department to another there shall be transferred the veteran preference employee "assigned to any such function." We hold that in order for an employee to come within either the statute or the regulation that he be employed at the time the transfer takes place. As applied here, the only employees of the War Assets Administration who would come within that meaning would be those employees who had not been effectively separated from the War Assets Administration prior to June 30, 1949. It was on this basis that plaintiff's appeal, as well as the appeals of the other War Assets Administration employees, were denied by the Civil Service Commission. The Commission took the position that only those employees who had received their notice of separation subsequent to June 1, 1949, were entitled to be considered for reassignment in the General Services Administration. Those employees having not had a 30-day notice prior to the date on which the agency was abolished were held not to have been effectively separated from the agency. Plaintiff having received his notice of separation on March 15, 1949, with his last day of active duty to be March 31, 1949, and then carried on an annual leave status through

mber 23, 1949, was effectively separated prior to June 949. On that date he was not employed in any function of the War Assets Administration.

ction 12 unlike section 14 of the Veterans' Preference *supra,* which pertains to separation for cause, conno provision for a 30-day notice but only requires that tions in force be made in accordance with Civil Servommission regulations. Those regulations do not re- a 30-day active duty notice, 5 CFR (1949 Ed.) 0.

intiff's petition will be dismissed.

s so ordered.

AMORE, *Judge;* WHITAKER, *Judge;* and JONES, *Chief* , concur.

DDEN, *Judge,* dissenting:

tion 12 of the Veterans' Preference Act provides:

> * * * when any or all of the functions of any agency re transferred to, * * * some other agency, * * * all reference employees in the function or functions ansferred * * * shall be first transferred to the relacing agency, * * * for employment in positions for hich they are qualified, before such agency * * * shall point additional employees from any other source r such positions.

June 30, 1949, the personnel, functions, and records War Assets Administration were transferred to the al Services Administration, which was that day 1. The fact that the transfer was for liquidation es does not seem important, since the purpose of the ssets Administration had been liquidation. On that e plaintiff was on annual leave from the War Assets istration, a status which he would occupy until some December.

The Civil Service Commission held that because the plaintiff was not at work on June 30, 1949, the quoted language of section 12 gave him no rights. I see no reason for such a narrow construction of section 12. It is not, after all, an interference with the freedom of management of administrators to say to them that if functions are transferred to their administration, those who have been performing those functions should get the jobs of performing them in the new agency.

An employee on annual leave, even if he has received a notice that his employment and pay will be terminated at the expiration of his leave, is still a Government employee, and is being paid only because he is a Government employee. A normal reading of section 12 would give him the rights created by that section.

# INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Jurisdiction | 1 |
| Question presented | 1 |
| Statute involved | 2 |
| Statement | 2 |
| Argument | 4 |
| Conclusion | 9 |


## CITATIONS


| | |
|---|---|
| Cases: | |
| *Ashley* v. *Ross*, 191 F. 2d 655 | 5 |
| *Fass* v. *Gray*, 197 F. 2d 587, certiorari denied, 344 U. S. 849 | 5 |
| Statutes: | |
| Act of June 30, 1948, 62 Stat. 1202 | 2 |
| Act of February 21, 1949, 63 Stat. 6 | 2 |
| Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 381 | 3 |
| Lump Sum Payment Act of 1944, 58 Stat. 845, 5 U. S. C. 61 (b) (1952) | 8 |
| Veterans Preference Act of 1944, 58 Stat. 387, 390, as amended, 61 Stat. 723, 5 U. S. C. 860, 861 (1952) | 2 |
| Section 12 | 2, 4, 9 |
| Section 14 | 5 |
| Miscellaneous: | |
| 5 C. F. R. Sec. 20.10 | 6 |
| 5 C. F. R. Sec. 20.12 (1949) | 6, 7 |


407609—56——1

# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 499

ROBERT L. HOLCOMB, PETITIONER

*v.*

THE UNITED STATES

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the Court of Claims (Pet. App. 1a–8a) is unreported.

### JURISDICTION

The judgment of the Court of Claims was entered on July 12, 1956. The petition for a writ of certiorari was filed on October 10, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

### QUESTION PRESENTED

Whether the Court of Claims correctly held that petitioner was effectively separated from the War Assets Administration prior to its abolition and, therefore, was not entitled to be transferred to the General

Services Administration when the remaining functions of the War Assets Administration were so transferred.

**STATUTE INVOLVED**

Section 12 of the Veterans Preference Act of 1944, 58 Stat. 387, 390, as amended, 61 Stat. 723, 5 U. S. C. 861 (1952) provides:

> In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: * * * *And provided further,* That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions.

**STATEMENT**

Petitioner, a veterans preference eligible with civil service status, held a position with the War Assets Administration. By Act of June 30, 1948, 62 Stat. 1202, Congress provided for the abolition of that agency to be effective as of February 28, 1949. By Act of February 21, 1949, 63 Stat. 6, the date of abolition was extended to June 30, 1949. On March 15,

1949, the War Assets Administration notified petitioner that his last day of active duty would be March 31, 1949, and that he would be carried on an annual leave status until December 23, 1949, and on furlough status until March 14, 1950 (Pet. App. p. 1a). Thousands of other employees, as well as petitioner, were dismissed as a result of the abolition of the agency (Pet. App. p. 2a) and when petitioner received his notice of separation he was the only employee remaining on his retention register, every other employee in his competitive level having previously received notice of separation (Pet. App. p. 4a). On June 30, 1949, the War Assets Administration was in fact abolished.

Petitioner appealed his dismissal to the Civil Service Commission, contending that he was improperly separated from the War Assets Administration and that he should have been transferred to the General Services Administration. This latter agency was created by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 381, for the purpose, among other things, of liquidating the remaining functions of the War Assets Administration (Pet. App. p. 3a). The Civil Service Commission upheld petitioner's removal (Pet. App. 1a). Petitioner later brought suit in the Court of Claims for back pay from March 30, 1949 to February 5, 1951.[1] By decision of July 12, 1956, the Court of Claims, one judge dissenting, held that petitioner had been properly removed from the War Assets Administration and that Section 12 of the Veterans

[1] Petitioner secured employment with the Department of the Army on this date (Pet. App. 1a).

Preference Act did not require that he be transferred to the General Services Administration.

**ARGUMENT**

The present petition is based on a misconstruction of the opinion of the Court of Claims. That court held that petitioner was not an employee of the War Assets Administration on June 30, 1949, and not entitled to transfer rights under Section 12 of the Veterans Preference Act because he had been "effectively separated" from the War Assets Administration prior to June 30, 1949 (Pet. App. p. 6a). This holding, we submit, is unquestionably correct. The Court of Claims did not hold, as petitioner erroneously asserts (Pet. p. 4), that he was not an employee of the War Assets Administration on June 30, 1949, merely because he was on annual leave on that date.

The portion of Section 12 on which petitioner relies (Pet. p. 2) provides:

> * * * when any or all of the functions of any agency are transferred to, * * * some other agency * * * all preference employees in the function or functions transferred * * * shall be first transferred to the replacing agency, * * * for employment in positions for which they are qualified before such agency * * * shall appoint additional employees from any source for such positions.

It is plain that this grants transfer rights only to preference employees who are "in the function" transferred at the time of its transfer. On June 30, 1949,

the time of the transfer of the remaining functions of the War Assets Administration, petitioner was not in any function of that agency. Prior to that time, namely on March 15, 1949, he had been notified that he would be permanently removed from active duty on March 31, 1949, and he was so removed.

Petitioner, quoting from the dissenting opinion in the Court of Claims, contends that he had transfer rights under Section 12 despite the fact that he had been permanently removed from active duty because he was "still a government employee and [was] being paid only because he [was] a government employee" (Pet. 4). This, however, is not an accurate statement of petitioner's status at the time of the abolition of the War Assets Administration.

Petitioner's removal pursuant to the abolition of the War Assets Administration did not require any prior notice to be effective under either the Veterans Preference Act or Civil Service Commission regulations. Section 12 of the Veterans Preference Act, governing removals pursuant to reduction in force, is not strictly applicable to removals pursuant to the abolition of an agency. Even if applicable, Section 12 would not give petitioner a right to a prior notice because it, unlike Section 14, governing removals for cause, does not contain any notice requirement. *Fass* v. *Gray,* 197 F. 2d 587, certiorari denied, 344 U. S. 849 (C. A. D. C.); *Ashley* v. *Ross,* 191 F. 2d 655 (C. A. D. C.).

The Civil Service Commission regulation governing notice periods to employees of liquidating agencies is

contained in 5 C. F. R. 20.12 (1949) which provides in pertinent part:

> *Special Regulations on liquidation.* Whenever it has been determined that all functions and all positions in an entire department, an entire governmental entity, or an entire competitive area are to be abolished within a specified time period, actions may be taken in regard to individual employees at different dates at administrative discretion: * * * *Provided further,* That notices to group A–1 and A–2 employees with competitive status shall be made to conform to the notice requirements of § 20.10.

Section 20.10 provides in pertinent part:

> *Notice to Employees.* An employee in Group A–1 or A–2 with competitive status affected by a reduction in force shall be given an individual notice in writing one year before the action becomes effective. His one-year notice period shall be composed of, whenever possible, at least 30 days in an active duty status; a non-duty status with pay for the duration of his leave, if any; and the balance of the year in a furlough or leave without pay status. Exceptions to this rule are authorized when * * * the agency as a whole is liquidating, in which case the notice period shall terminate as of the day the agency is finally liquidated * * *
>
> Each employee affected by reduction in force shall be given an individual notice in writing at least 30 days before the action becomes effective. Where it is not possible to continue the employee in an active-duty status for the period specified in the notice, he shall have the greatest

> possible notice before he is relieved from active duty and shall thereafter be carried on the rolls for the remainder of the period * * *.

On June 28, 1948, the head of the War Assets Administration requested authority of the Civil Service Commission to conduct removals in accordance with Section 20.12 (R. 42–43). The Civil Service Commission granted this authority by letter of June 30, 1948 (R. 44–45). Under these regulations, the most petitioner was entitled to was a notice 30 days prior to his removal. Petitioner received such a notice on March 15, 1949, more than 30 days prior to the abolition of the War Assets Administration. However, petitioner also received a one year notice period despite the fact that, as an employee of a liquidating agency, he was clearly not entitled to any.[2] He was purportedly granted this period because the Director of Personnel of the War Assets Administration desired to grant the employees of that agency every possible benefit,[3] and it was solely for this reason that petitioner was still carried on the rolls of the War Assets Administration on June 30, 1949.

---

[2] The purpose of the one year notice period is to "facilitate the return to duty" of employees who had been temporarily reduced in force (R. 54). This purpose does not apply, of course, where the removal is pursuant to the abolition of the agency. However, the notice period has certain incidental advantages for employees, *e. g.*, six months of the notice period may be credited to the employee for retirement purposes (R. 54).

[3] The Director of Personnel of War Assets Administration wrote the Civil Service Commission as follows:

"In order to extend every advantage to status employees to encourage continuous employment with this agency, the follow-

Except for this, he would have been finally removed from the rolls of the War Assets Administration no later than April 14, 1949, 30 days after he received his notice of removal, at which time he would have received the monetary value of his accrued annual leave as a lump sum under the Lump Sum Payment Act of 1944, 58 Stat. 845, 5 U. S. C. 61 (b) (1952). Because petitioner was granted this one year period, he was permitted to receive his annual leave in regular payments until it was exhausted, at which time he was placed in a furlough status for the remainder of the period. In these circumstances, it cannot be said that petitioner was "being paid as an employee" on June 30, 1949; he was not receiving any additional

---

ing interpretation is the one we would prefer to place on the regulation in question [20.12]:

"'a. All employees in the competitive service in reduction in force subgroups A–1 and A–2 will continue to receive a one year notice of reduction in force. * * * (R. 49).'"

The Civil Service Commission replied:

"* * * Since Public Law 862 directed the liquidation of War Assets Administration as of February 28, 1949, ordinarily notices issued to A–1 and A–2 employees should provide for termination on the date of the liquidation of the agency.

"The Commission has no objection to the issuance of one-year notices by your agency in cases where it is agreeable to agencies to which any functions are transferred either on a continuing or a liquidating basis (R. 50)."

It should be further noted that the agreement of the General Services Administration, the agency to which the remaining functions of the War Assets Administration were transferred, was never obtained. The one year notice period which the War Assets Administration purported to give petitioner not only does not confer upon petitioner the transfer rights which he asserts, but was not given in conformance with the authority granted by the Civil Service Commission.

, but was receiving only funds which he had viously earned and to which he was in any event tled. Neither can it be said that the fact that tioner was technically on annual leave on June 1949, entitled him to transfer rights under Section which he otherwise would not have had. He had permanently removed from active duty and his is was clearly not that of one "in the function" sferred at the time of its transfer as Section 12 ires. When petitioner received the one year notice eceived more than he was entitled to, and his at- ot to use this notice as a basis for obtaining still ner unauthorized benefits cannot be sustained. holding of the Court of Claims rejecting peti- r's contention and upholding the authoritative g of the Civil Service Commission, the agency fically charged with the administration and en- ment of the Veterans Preference Act (5 U. S. C. 1952), is clearly correct.

## CONCLUSION

r the foregoing reasons, it is respectfully sub- d that the petition should be denied.

J. LEE RANKIN,
*Solicitor General.*
GEORGE COCHRAN DOUB,
*Assistant Attorney General.*
SAMUEL D. SLADE,
LINO A. GRAGLIA,
*Attorneys.*

EMBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956